

AMENDED IN ASSEMBLY AUGUST 23, 2000

AMENDED IN SENATE JUNE 28, 2000

AMENDED IN SENATE JUNE 19, 2000

AMENDED IN SENATE MAY 22, 2000

SENATE BILL

No. 1510

Introduced by Senator Escutia

February 15, 2000

An act to add Section 22962 to the Business and Professions Code, to amend Section 118950 of the Health and Safety Code, and to add Section 308.3 to the Penal Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1510, as amended, Escutia. Tobacco products: tobacco sales.

Under existing law it is unlawful to sell tobacco products from a vending machine or appliance except vending machines located at least 15 feet from the entrance of a public premise licensed to sell alcohol.

This bill would impose a civil penalty for the sale of cigarettes ~~and smokeless tobacco products~~ by means of self-service display, as defined. The bill would authorize the Attorney General, a city attorney, a county counsel, and a district attorney to bring a civil action to enforce this sale restriction. ~~This~~

This bill would specify that the provisions relating to self-service displays exclude tobacco product vending

machines located at least 15 feet from the entrance of a public premise licensed to sell alcoholic beverages.

Under existing law it is unlawful to engage in the nonsale distribution of tobacco in public areas, as defined.

This bill would prohibit the nonsale distribution of tobacco on private property that is open to the general public, as defined. This bill would specify that the provisions relating to the nonsale distribution of tobacco on private property that is open to the general public exclude locations where minors are prohibited by law and locations leased for private functions where minors are denied access by a peace officer or licensed security guard on the premises.

Existing law imposes an infraction on a person who sells cigarettes that are not contained in a sealed and properly labeled package, as defined.

This bill would impose an infraction or civil penalty for the manufacturing, distribution, sale, or offering of a package of cigarettes that does not contain at least 20 cigarettes, *defined to include bidi or beedie cigarettes*, or a package of loose tobacco that does not contain at least 0.60 ounces of tobacco.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22962 is added to the Business
2 and Professions Code, to read:

3 22962. (a) For purposes of this section, “self-service
4 display” means the open display of tobacco products in a
5 manner that is accessible to the general public without
6 the assistance of the retailer or employee of the retailer.

7 (b) Except as permitted in subdivision (b) of Section
8 22960, it is unlawful for any person engaged in the retail
9 sale of tobacco products to sell, offer for sale, or display for

1 sale cigarettes ~~or smokeless tobacco products~~ by
2 self-service display. Any person who violates this section
3 is subject to those civil penalties specified in the schedule
4 in subdivision (a) of Section 22958.

5 (c) *This section does not apply to self-service displays*
6 *that are located in a retail establishment where the*
7 *retailer ensures that no person under 18 years of age is*
8 *present or permitted to enter at any time and there is a*
9 *sign prominently posted at all entrances to the retail*
10 *establishment, stating the following, or words to that*
11 *effect:*

12 “RESTRICTED TOBACCO SALE AREA, NO
13 PERSONS UNDER 18 YEARS OF AGE ALLOWED”

14 (d) The Attorney General, a city attorney, a county
15 counsel, or a district attorney may bring a civil action to
16 enforce this section.

17 ~~(d)~~

18 (e) This section does not preempt or otherwise
19 prohibit the adoption of a local standard that imposes
20 greater restrictions on the access to tobacco products
21 than the restrictions imposed by this section. To the
22 extent that there is an inconsistency between this section
23 and a local standard that imposes greater restrictions on
24 the access to tobacco products, the greater restriction on
25 the access to tobacco products in the local standard shall
26 prevail.

27 SEC. 2. Section 118950 of the Health and Safety Code
28 is amended to read:

29 118950. (a) The Legislature hereby finds and
30 declares the following:

31 (1) Smoking is the single most important source of
32 preventable disease and premature death in California.

33 (2) Smoking is responsible for one-quarter of all death
34 caused by fire.

35 (3) Tobacco-related disease places a tremendous
36 financial burden upon the persons with the disease, their
37 families, the health care delivery system, and society as a
38 whole.

39 (4) Despite laws in at least 44 states prohibiting the
40 sale of tobacco products to minors, each day 3,000

1 children start using tobacco products in this nation.
2 Children under the age of 18 consume 947 million
3 packages of cigarettes in this country yearly.

4 (5) The earlier a child begins to use tobacco products,
5 the more likely it is that the child will be unable to quit.

6 (6) More than 60 percent of all smokers begin smoking
7 by the age of 14, and 90 percent begin by age 19.

8 (7) Use of smokeless tobacco products among minors
9 in this state is increasing.

10 (8) Smokeless tobacco or chewing tobacco is harmful
11 to the health of individuals and may cause gum disease,
12 mouth or oral cancers, increased tooth decay and
13 leukoplakia.

14 (9) Tobacco product advertising and promotion are an
15 important cause of tobacco use among children. More
16 money is spent advertising and promoting tobacco
17 products than any other consumer product.

18 (10) Distribution of tobacco product samples and
19 coupons is a recognized source by which minors obtain
20 tobacco products, beginning the addiction process.

21 (11) It is the intent of the Legislature that keeping
22 children from beginning to use tobacco products in any
23 form and encouraging all persons to quit tobacco use shall
24 be among the highest priorities in disease prevention for
25 the State of California.

26 (b) It is unlawful for any person, agent, or employee
27 of a person in the business of selling or distributing
28 smokeless tobacco or cigarettes from engaging in the
29 nonsale distribution of any smokeless tobacco or
30 cigarettes to any person in any public building, park or
31 playground, or on any public sidewalk, street, or other
32 public grounds, or on private property that is open to the
33 general public.

34 (c) For purposes of this section:

35 (1) "Nonsale distribution" means to give smokeless
36 tobacco or cigarettes to the general public at no cost, or
37 at nominal cost, or to give coupons or rebate offers for
38 smokeless tobacco or cigarettes to the general public at
39 no cost or at nominal cost. Distribution of tobacco
40 products or coupons or rebate offers in connection with

1 the sale of another item, including tobacco products,
2 cigarette lighters, magazines, or newspapers shall not
3 constitute nonsale distribution.

4 (2) “Smokeless tobacco” means (A) a loose or flat,
5 compressed cake form of tobacco that may be chewed or
6 held in the mouth or (B) a shredded, powdered, or
7 pulverized form of tobacco that may be inhaled through
8 the nostrils, chewed, or held in the mouth.

9 (3) “Public building, park, playground, sidewalk,
10 street, or other public grounds” means any structure or
11 outdoor area that is owned, operated, or maintained by
12 any public entity, including, but not limited to: city and
13 county streets and sidewalks, parade grounds, fair
14 grounds, public transportation facilities and terminals,
15 public reception areas, public health facilities, public
16 recreational facilities, and public office buildings.

17 (4) “Private property that is open to the general
18 public” means any structure or outdoor area available for
19 entry or use that is owned, operated, or maintained by
20 any private entity, whether or not a fee or charge is
21 required for entry or use.

22 (d) Any person who violates this section shall be liable
23 for a civil penalty of not less than two hundred dollars
24 (\$200) for one act, five hundred dollars (\$500) for two
25 acts, and one thousand dollars (\$1,000) for each
26 succeeding violation. Each distribution of a single
27 package, coupon, or rebate offer to an individual member
28 of the general public in violation of this section shall be
29 considered a separate violation.

30 (e) Neither this section nor any other provision of law
31 shall invalidate an ordinance of, or prohibits the adoption
32 of an ordinance by, a city or county regulating
33 distribution of smokeless tobacco or cigarette samples
34 within its boundaries that is more restrictive than this
35 section. The provisions of an ordinance that imposes
36 greater restrictions on the sale or distribution of tobacco
37 than this section shall govern, to the extent of any
38 inconsistency between it and this section.

39 (f) This section shall not apply to any public building,
40 park, playground, sidewalk, street, or other public

1 grounds, or any private property that is open to the
2 general public where minors are prohibited by law. This
3 section also shall not apply to any public building, park,
4 playground, sidewalk, street, or other public grounds,~~or~~
5 ~~any private property that is~~ open to the general public
6 leased for private functions where minors are denied
7 access by a peace officer or licensed security guard on the
8 premises.

9 *(g) This section shall not apply to any private property*
10 *that is open to the general public where minors are*
11 *denied access to a separate nonsale distribution area by*
12 *a peace officer or licensed security guard stationed at the*
13 *entrance of the separate nonsale distribution area.*

14 SEC. 3. Section 308.3 is added to the Penal Code, to
15 read:

16 308.3. (a) A person, firm, corporation, or business
17 may not manufacture for sale, distribute, sell, or offer to
18 sell any cigarette, except in a package containing at least
19 20 cigarettes. A person, firm, corporation, or business may
20 not manufacture for sale, distribute, sell, or offer to sell
21 any loose tobacco, except in a package containing at least
22 0.60 ounces of tobacco.

23 (b) As used in subdivision (a), “cigarette” means any
24 of the following:

25 (1) Any product that contains nicotine, is intended to
26 be burned or heated under ordinary conditions of use,
27 and consists of, or contains, any roll of tobacco wrapped
28 in paper or in any substance not containing tobacco.

29 (2) Tobacco, in any form, that is functional in the
30 product, that, because of its appearance, the type of
31 tobacco used in the filler, or its packaging and labeling, is
32 likely to be offered to, or purchased by, consumers as a
33 cigarette.

34 (3) Any roll of tobacco wrapped in any substance
35 containing tobacco which, because of its appearance, the
36 type of tobacco used in the filler, or its packaging and
37 labeling, is likely to be offered to, or purchased by,
38 consumers as a cigarette described in paragraph (1).

39 (c) Any person, firm, corporation, or business that
40 violates this section is liable for an infraction, or in an

1 action brought by the Attorney General, a district
2 attorney, a county counsel, or a city attorney for a civil
3 penalty of two hundred dollars (\$200) for the first
4 violation, five hundred dollars (\$500) for the second
5 violation, and one thousand dollars (\$1,000) for each
6 succeeding violation.

7 *(d) (1) For the purposes of this section, "cigarette"*
8 *includes "bidi" or "beedie" cigarettes.*

9 *(2) For the purposes of this section, "bidi" or "beedie"*
10 *cigarettes are a product containing tobacco that is*
11 *wrapped in temburni leaf (diospyros melanoxylon) or*
12 *tendu leaf (diospyros exculpra), or any other product that*
13 *is offered to, or purchased by, consumers as bidis or*
14 *beedies.*

15 SEC. 4. No reimbursement is required by this act
16 pursuant to Section 6 of Article XIII B of the California
17 Constitution because the only costs that may be incurred
18 by a local agency or school district will be incurred
19 because this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section
22 17556 of the Government Code, or changes the definition
23 of a crime within the meaning of Section 6 of Article
24 XIII B of the California Constitution.